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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 75-826

Melvin R. Martin,

Petitioner,

v.

Dayton School District No. 2, Wallace M. Payne, Gerald Howard, Gale Davis, Patrick Donohue, Dale Rainwater, School Board Directors, Victor C. Anderson, Superintendent,

Respondents.

BRIEF FOR RESPONDENTS IN OPPOSITION

QUESTIONS PRESENTED

Whether the procedure outlined in the Washington State Statutes, specifically R.C.W. 28A.58.450 and R.C.W. 28A.58.515

meet the requirements of the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States wherein a teacher possessing a property interest in continued employment may be suspended?

STATUTES INVOLVED

The pertinent statutes of the State of Washington (R.C.W. 28A.58.450 and R.C.W. 28A.58.515) are set forth herein at App. 1.

STATEMENT OF CASE

In the spring of 1971 an opening existed in the Dayton School District for the positions of high school basketball coach, industrial arts instructor and physical education instructor. Mr. Martin, petitioner, was hired for the position. In late spring he traveled to Dayton, Washington, (population approximately

3,500) with his wife on two occasions to seek housing.

From September, 1971, through January, 1972, the petitioner on numerous occasions refused to follow school policies and directions from his superiors.

On December 30, 1971, the Dayton Varsity Basketball Team was to travel to Benton City, Washington, to play an evening game. The petitioner at this time had a female friend visiting him for the holidays in the town of Dayton. Without prior permission and against the policy of the school, the petitioner allowed his female friend to ride on the school bus with the players and himself. During the return trip the petitioner was kissing and caressing his female friend.

On January 5, 1972, following the December 30th incident, the principal, superintendent and petitioner met to discuss

the situation. Later that date the superintendent requested the petitioner's resignation which he refused to give.

On January 10, 1972, the Chairman of the Board of Directors called to order an executive meeting which was not a part of a regular meeting or special meeting. As the result of this meeting, a notice of termination was served upon petitioner on January 11th. On January 18th, legal counsel for the District determined that the executive session of January 10th was not proper and requested that a proper notice and motion be adopted at the regular school board meeting to be held on January 19th. When petitioner received the notice of January 11th he immediately sought counsel and on January 19th filed an action in the Superior Court for Columbia County under Cause No. 10366.

Upon receipt of the notice of January

20th the petitioner filed another action in the Superior Court of Columbia County, Cause No. 10368. Both causes in the Superior Court for Columbia County were filed pursuant to R.C.W. 28A.58.515.

A trial was conducted commencing on May 17, 1972. On May 19, 1972, the trial court rendered its decision holding that the causes contained in the notice of January 19, 1972, were sufficient for the school board to terminate petitioner's employment. Thereafter, petitioner appealed to the Court of Appeals of the State of Washington. The Court of Appeals reversed the trial court on the basis that once the petitioner filed his notice of appeal pursuant to R.C.W. 28A.58.515 the actions of the school board were void for lack of jurisdiction wherein it stated:

> "Once appellant had filed the notice of appeal in superior court respondent no longer retained jur-

> isdiction to act in making either substantial or technical changes in its decision . . . . Appellate jurisdiction over the subject matter of the appeal must be complete, and the actions of respondent board after the initial notice of appeal was filed were void for lack of jurisdiction."

Thereafter, the respondent petitioned for review by the Supreme Court of the State of Washington. All pleadings and briefs were presented along with oral argument. The Supreme Court reversed the Court of Appeals and affirmed the trial court, stating in part:

> "We hold that such minimal judicial contact did not oust the school board from its legal ability to issue a proper notice to plaintiff. In so holding we emphasize that the court had taken no action, that plaintiff was in no way prejudiced and that the board gained no advantage by its actions."

REASON FOR DENYING THE WRIT

The petitioner is asking this Court to review anew the evidence in this case, although the highest court of the state of

Washington has ruled that the notice of probable cause issued on January 19, 1972, was sufficient under the applicable statutes of the State. Yet this Court has held that the decisions of the highest court of a state on matters of state law are in general conclusive upon this Court. Huddleston v. Dwyer, 322 U.S. 232 (1943).

If there is any federal issue before this Court, it is whether the respondent sufficiently followed the procedure set out in the State Statutes upon the issuance of a notice of probable cause of termination.

The petitioner never did nor has he now alleged that the State Statutes, R.C.W. 28A.58.450[1] and R.C.W. 28A.58.515[2] did not fulfill the requirements of the Due Process Clause of the Fourteenth Amendment of the Constitution of the United

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[1] See Appendix, p. 1.

[2] See Appendix, p. 3.

States. The petitioner states that he was suspended on January 11, 1972, and his pay was stopped after January 31, 1972, although he had been afforded no opportunity to be heard prior to those actions.[3]

R.C.W. 28A.58.450 provides in part as follows:

> ". . . Every such employee so notified, at his or her request made in writing and filed with the chairman of the board or secretary of the board of directors of the district within ten days after receiving such notice, shall be granted opportunity for hearing before the board of directors of the district, to determine whether or not there is sufficient cause or causes for his or her discharge or other adverse action against his contract status. . . <u>If such employee does not request a hearing as provided herein, such employee may be discharged or otherwise adversely affected as provided in the notice served upon the employee.</u>"

The Washington Statutes regarding discharge grant the prior opportunity to be heard in a full adversarial hearing within

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[3] See Petition for Writ of Certiorari, p.9.

ten (10) days of the teacher's request after he is served with notice of probable cause for discharge.

The petitioner did not choose to have a hearing before the board as outlined in R.C.W. 28A.58.450, however, chose to appeal directly to the Superior Court for a trial de novo as provided by R.C.W. 28A.58.515.[4] The petitioner's own decision placed him in Superior Court instead of before the school board within ten days of his request. A request was never made.

Arnett v. Kennedy, 416 U.S. 134 (1974); Boehning v. Indiana State Employees Association, 44 L.W. 3275 (Nov. 11, 1975); Hostrop v. Board of Junior College District No. 515, (7th Cir. Sept. 24, 1975); Goss v. Lopez 419 U.S. 565 (1975) all cited as authority for petitioner involved the allegation of a state statute being unconstitutional. Here there

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[4]See Appendix, p. 3.

is no such allegation.

CONCLUSION

For the reasons set forth hereinabove this case did not involve a violation of the petitioner's Fourteenth Amendment rights. It involves only the interpretation of the state statutes and the technical procedural requirements of those statutes. The State Supreme Court of the State of Washington has ruled that the notice furnished petitioner was sufficient. The Writ of Certiorari should be denied.

Respectfully submitted,

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COUNSEL FOR
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APPENDIX

R.C.W. 28A.58.450 Adverse change in contract status of certificated employee --Notice--Probable cause--Hearing--Decision.

Every board of directors determining that there is probable cause or causes for a teacher, principal, supervisor, superintendent, or other certificated employee, holding a position as such with the school district, hereinafter referred to as "employee", to be discharged or otherwise adversely affected in his contract status, shall notify such employee in writing of its decision, which notification shall specify the probable cause or causes for such action. Such notices shall be served upon that employee personally, or by certified or registered mail, or by leaving a copy of the notice at the house of his or her usual abode with some person of suitable age and discretion then resident therein. Every such employee so notified, at his or her request made in writing and filed with the chairman of the board or secretary of the board of directors of the district within ten days after receiving such notice, shall be granted opportunity for hearing before the board of directors of the district, to determine whether or not there is sufficient cause or causes for his or her discharge or other adverse action against his contract status. In the request for hearing, the employee may request either an open

or closed hearing. The Board upon receipt of such request shall call the hearing to be held within ten days following the receipt of such request, and at least three days prior to the date fixed for the hearing shall notify such employee in writing of the date, time and place of the hearing. The hearing shall be open or closed as requested by the employee, but if the employee fails to make such request, the board may determine whether the hearing shall be open or closed. The board may reasonably regulate the conduct of the hearing. The employee may engage such counsel and produce such witnesses as he or she may desire. The board of directors, within five days following the conclusion of such hearing, shall notify such employee in writing of its final decision. Any decision to discharge or to take other adverse action against such employee shall be based solely upon the cause or causes for discharge specified in the notice of probable cause to the employee and established by a preponderance of the evidence at the hearing to be sufficient cause or causes for discharge or other adverse action against his contract status.

In the event any such notice or opportunity for hearing is not timely given by the district, or in the event cause for discharge or other adverse action is not established by a preponderance of the evidence at the hearing, such employee shall not be discharged or otherwise adversely affected in his

contract status for the causes stated in the original notice for the duration of his or her contract.

If such employee does not request a hearing as provided herein, such employee may be discharged or otherwise adversely affected as provided in the notice served upon the employee. (Footnotes omitted.)

R.C.W. 28A.58.515 Direct Judicial appeals in lieu of board hearings provided in R.C.W. 28A.58.450 and 28A.67.070.

In lieu of requesting a hearing before the board of directors pursuant to the provisions of R.C.W. 28A. 58.450 and 28A.67.070, an employee may elect to appeal the action of the board directly to the superior court of the county in which the school district is located by serving upon the clerk of the school board and filing with the clerk of the superior court a notice of appeal within ten days after receiving the notification of the action of the board. The notice of appeal shall set forth in a clear and concise manner the action appealed from. The superior court shall determine whether or not there was sufficient cause for the action of the board of directors and shall base its determination solely upon the causes or causes stated in the notice of the employee. The appeal provided in this section shall be conducted in the same manner as appeals provided

in R.C.W. 28A.58.470 through 28A.58.500.

(Footnotes Omitted.)